

Honorable Emanuel Celler
Chairman
Committee on the Judiciary
House of Representatives
Washington 25, D. C.

Dear Mr. Celler:

This has reference to your request for an expression of our views on H. R. 8748, to revise, codify and enact into law title 5 of the United States Code, entitled "Government Organization and Personnel." Our reply was delayed somewhat pending publication and subsequent review of the revisers' notes on this bill which were presented in the form of a report from the Committee on the Judiciary.

As to matters of policy we have little to add to the succinct statement of the revisers that the object of the bill is to restate the personnel laws of the United States as a unified whole, making no substantive change in the laws as they existed prior to April 1, 1959.

As to specific portions of the bill we have the following comments:

a. Page 54, section 4101 ~~et seq.~~ With regard to "Part III - Employees" we are concerned with "Chapter 41 - Training" (or "Subpart C - Employee Performance") which encompasses the "Government Employee Training Act," Public Law 85-507, 72 Stat. 327.

(1) In Executive Order 10805, the President specifically exempted the Central Intelligence Agency from certain provisions of the Training Act. Our concern is whether, under recognized principles of statutory construction, the specific exemptions of the Executive Order would apply to the corresponding sections as they are set forth in the revision of title 5. If such is not the case, this Agency would apparently require a new Executive Order to restore the status quo. An oral inquiry on this subject was made at the Office of the General Counsel of the Civil Service Commission which Office has so ably served as the reviser of title 5. They advised informally that in their opinion the exceptions to the Training Act specified in Executive Order 10805 will remain effective with respect to the corresponding sections transferred into revised title 5. For the record and for the information of the Bureau of the Budget, however, it is believed desirable to specifically refer to the

portion of H. R. 8748 which corresponds to the paragraphs of Public Law 85-507 which are specifically exempted by Executive Order 10805. In order to facilitate this, a portion of the Executive Order is set forth in an attachment together with a correlation between the sections of the Training Act from which the Agency is exempted and the corresponding sections of H. R. 8748.

(2) We feel reasonably certain that this is not the only instance in which the question will be raised as to the continued effectiveness of an Executive Order relating to a law which has been incorporated into the revised title 5. It may, therefore, be desirable to include in the bill at an appropriate place language which provides that any effective Executive Order pertaining to a law or portion thereof which is incorporated into the revision of title 5 shall remain effective as to that law or portion thereof which is so incorporated into the revision of title 5.

b. Page 102, section 5504(b). The last sentence of this paragraph should be stricken. This language has been deleted from current legislation by Public Law 86-122, approved July 21, 1959.

c. Page 127, section 5921(a). In order to broaden applicability of the paragraph to encompass agencies such as the Central Intelligence Agency, a phrase is recommended for addition so that this paragraph will read as follows: (the recommended phrase is underscored)

"(a) Appropriations or funds available to the executive departments, independent establishments and Government corporations for pay of civilian employees stationed outside the several States and the District of Columbia or in Alaska, whose rates of basic pay are fixed by statute or whose rates of compensation are fixed by administrative action pursuant to law, are available for additional pay to these employees

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d. Page 113, section 5550; page 130, section 6103. Neither of these paragraphs state the provisions of law with respect to alternate days to be observed when a holiday falls on a Saturday or Sunday or a day in lieu of a Saturday or Sunday for employees whose workweek is other than Monday through Friday. It is therefore recommended that appropriate language be incorporated (preferably under paragraph 6103) which would state these provisions, especially in view of the recent Public Law 86-362, approved September 22, 1959.

e. Page 148, section 7901. This section on health service programs probably should be reviewed for possible revisions required by Public Law 86-388, The Federal Employees Health Benefits Act of 1959, approved September 28, 1959.

f. Page 127. It is observed that as section 5921 is now worded, cost-of-living allowances or recruitment incentive allowances are available for Alaska but not for Hawaii. This undoubtedly is due to the fact that Hawaii had not become a state at the time of the drafting of H. R. 8740. The admission of Alaska and Hawaii to statehood requires a careful review of phrases such as "in the continental United States, its territories," "outside the several States and the District of Columbia and in Alaska," and combinations thereof as used in paragraphs pertaining to travel, transportation, allowances, as well as elsewhere. It is recommended that the entire bill be reviewed specifically to correct the wording of such phrases to avoid confusion.

g. Page 189, section 8331(b)(3). The second word apparently should be "or" and not "of" to read "members or Congressional employees" etc.

In our opinion the Office of General Counsel of the Civil Service Commission has performed an extremely valuable service in drafting the revision of title 5 and one which will prove to be of inestimable service in the future.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

John S. Warner
Legislative Counsel

Attachment

cc: Bureau of the Budget

OGC/LC:OEP:jem (24 Feb 1960)

Orig & 1 - Addressee
✓ 1 - D/Training
1 - D/Personnel
1 - Comptroller